

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

[illegible]

MOTION FOR *NUNC PRO TUNC* EXTENSION OF TIME ORDER

NOW COME Defendants, by and through their undersigned attorneys, and hereby move this Honorable Court for an Order *nunc pro tunc* extending the time to

file rebuttal expert reports from Saturday, April 12, 2025 to Monday, April 14, 2025, and in support thereof, state as follows:

1. On January 27, 2025, the Parties filed a *Joint Status Report* which proposed, *inter alia*, an Expert Report Deadline of **April 1, 2025**, a Rebuttal Expert Report Deadline of **April 12, 2025**, and an Expert Discovery Cut-off of **April 26, 2025**. (ECF No. 100, PageID#3558-61). The Court's *Final Pretrial and Trial Order* entered on January 30, 2025, entered these deadlines as proposed. (ECF No. 102, PageID#3564-83).

2. During the meet and confer process, Plaintiffs' counsel proposed an Expert Report Deadline of April 1, 2025, a Rebuttal Expert Report Deadline of **Tuesday, April 15, 2025**, and an Expert Discovery Cut-off of **Tuesday, April 30, 2025**.

3. During the meet and confer process, defense counsel accepted the Expert Report Deadline of April 1, 2025 proposed by Plaintiffs' counsel, but mistakenly modified the Rebuttal Expert Report Deadline to **Saturday, April 12, 2025** and the Expert Discovery Cut-off to **Saturday, April 26, 2025**. (Koechley Decl., attached hereto as **Exhibit A**, at ¶ 2).

4. Defense counsel had intended to propose modifying the Rebuttal Expert Report Deadline and the Expert Discovery Cut-off to business days falling on **Monday, April 14, 2025** and to **Monday, April 28, 2025**, respectively. (*Id.* at ¶ 4).

5. During the meet and confer process, defense counsel encountered computer issues in that Microsoft Word crashed while redlining the draft Joint Status

Report that had been prepared by Plaintiffs and defense counsel inadvertently relied on the calendar for May 2025 rather than April 2025 in selecting Saturday dates for the Rebuttal Expert Report Deadline and Expert Discovery Cut-off Deadline, rather than the immediately following next business day. (*Id.* at ¶ 3).

6. On April 1, 2025, the Parties exchanged expert reports.

7. On Monday, April 14, 2025, Defendants served their Rebuttal Expert Report of John R. Bone, CPA, CFF.

8. Plaintiffs have not served any rebuttal expert reports.

9. During a meet and confer held between the parties last week on April 23, 2025 regarding efforts to attempt to resolve or narrow pretrial motions in limine, Plaintiffs' counsel advised defense counsel that the Rebuttal Expert Report Deadline was not automatically extended to Monday, April 14, 2025 under Sixth Circuit caselaw. Defense counsel promptly investigated and in so doing have reviewed *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that, in the Sixth Circuit, Federal Rule of Civil Procedure 6(a) "does not apply to situations where the court has established a specific calendar day as a deadline").

10. Per this Court's *Final Pretrial and Trial Order*, the deadlines set forth therein may be extended upon "a showing of excusable neglect on motion made after the deadline." (ECF No. 102 at p. 3, PageID#3566).

11. Factors for determining whether "excusable neglect" exists include, "the danger of prejudice to [the non-moving party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was

within the reasonable control of the movant, and whether the movant acted in good faith.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs., Ltd. P'ship*, 507 U.S. 380, 394–95 (1993).

12. Here, the Court should find good cause exists to enter an Order *nunc pro tunc* extending the deadline for serving Defendants’ Rebuttal Expert Report from Saturday, April 12, 2025 to Monday, April 14, 2025. Movant at all times acted in good faith and the delay in filing Defendants’ Rebuttal Expert Report was inadvertent. There also exists no danger of prejudice to the Plaintiffs as Plaintiff served no rebuttal report(s) of its own and there is no impact on the judicial proceedings. Plaintiffs had in fact originally proposed an even longer deadline to exchange expert rebuttal reports to April 15, 2025. Finally, the two (2) day weekend extension does not have an impact on any other deadline set by the Court.

WHEREFORE, Defendants respectfully request this Honorable Court enter an Order *nunc pro tunc* extending the deadline for serving Rebuttal Expert Reports from Saturday, April 12, 2025 to Monday, April 14, 2025, and such additional and further relief as this Honorable Court finds appropriate.

Dated: April 28, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically filed on April 28, 2024, in accordance with the Court's Electronic Filing Guidelines. A copy of the document will be sent to all parties by operation of the Court's CM/ECF system.

/s/ Steven D. Pearson
One of the Attorneys for Defendants